

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advantage Cellular Systems, Inc.)	
Petition for Waiver of)	CC Docket No. 96-45
the FCC's Universal Service Rules)	
_____)	

**Advantage Cellular Systems, Inc. Petition for Waiver
of the FCC's Universal Service Rules**

Michael R. Bennet
Rebecca L. Murphy
Bennet & Bennet, PLLC
10 G Street, NE
7th Floor
Washington, DC 20002
202-371-1500

Its Attorneys

Dated: November 2, 2005

SUMMARY

Advantage Cellular Systems, Inc. requests, to the extent necessary, a temporary waiver of the Commission's HCL and LSS line count filing deadlines for its September 2004 and December 2004 HCL and LSS filings. Advantage timely filed these HCL and LSS quarterly line count reports with USAC. However, USAC states that it did not receive these reports and will not distribute to Advantage the support for the period covered by these reports absent a waiver from the FCC. Because Advantage does not believe that a waiver is necessary, it requests that the FCC direct USAC to distribute to Advantage its unpaid universal service money for the period between January 2005 and June 2005. In the alternative, and to the extent necessary, Advantage requests that the FCC waive its HCL and LSS line count rule.

Good cause exists for the FCC to grant Advantage's waiver request. Advantage, if denied the support it is owed, will lose \$321,948 in HCL and LSS funding that is used to provide service to approximately 9,000 customers in rural, insular, and high-cost areas. A loss of \$321,948 in HCL and LSS funding will likely cause significant hardship in rural, insular and high-cost areas in Tennessee. Therefore, strict application of the FCC's HCL and LSS line count filing deadlines would be inequitable to Advantage and the rural customers Advantage serves.

Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's USF rules. Without a grant of this waiver request or other FCC action consistent with this request, Advantage will be forced to delay its planned network upgrades to the detriment of wireless customers in rural Tennessee. Delaying telecommunications service to underserved, rural portions of Tennessee does not serve the purpose of providing affordable telecommunications service to all Americans. Advantage has no

reasonable alternative but to seek a waiver. Additionally, granting Advantage's request will not burden USAC or any other HCL or LSS recipient.

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Advantage Cellular Systems, Inc. ("Advantage"), by its attorneys and pursuant to Section 1.3 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),¹ hereby requests, to the extent necessary, a temporary waiver of Section 54.307 of the Commission's Universal Service Fund ("USF") Rules.² Advantage timely filed its September 2004 and December 2004 high cost loop ("HCL") and local switching support ("LSS") quarterly line count reports with the Universal Service Administrative Company ("USAC"). However, USAC states that it is not in receipt of these reports, and will not release funds to Advantage for the period covered by these reports without a waiver of the FCC's USF line count rule. Advantage does not believe that a waiver of the FCC's HCL and LSS line count reporting rule is necessary, and Advantage hereby requests that the FCC direct USAC to accept Advantage's HCL and LSS line count reports and distribute to Advantage its unpaid universal service money for the period between January 2005 and June 2005. In the alternative, and to the extent necessary, Advantage requests that the FCC waive its HCL and LSS line count rule.

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.307.

I. Introduction and Background

Advantage is a small B block cellular carrier serving rural parts of Tennessee (Cannon, Tennessee RSA 2, CMA644). The FCC designated Advantage as an eligible telecommunications carrier (“ETC”) on October 22, 2004 in accordance with Section 214(e)(2) of the Communications Act.³

The FCC’s rules require that a competitive ETC report to USAC the number of working loops it serves in a rural incumbent local exchange carrier service area for the period ending six months prior to the reporting date in order to receive HCL support and LSS.⁴ The HCL and LSS line count data is due quarterly on March 30th for loops served as of September 30th of the previous year, July 31st for loops served as of December 31st of the previous year, September 30th for loops served as of March 31st of the same year, and December 30th for loops served as of June 30th of the same year.

Pursuant to the FCC’s rules, and consistent with its standard submission practices, Advantage has completed and timely transmitted via U.S. mail to USAC all of its HCL and LSS line count data since it has been designated as an ETC on October 22, 2004. Specifically, Advantage submitted its HCL and LSS line count reports on March 30, 2004, June 23, 2004, September 24, 2004, December 21, 2004, March 24, 2005, and June 27, 2005. Each of these

³ *In re Federal-State Joint Board on Universal Service, Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee*, FCC Docket No. 96-45, Order, DA 04-3357 (October 22, 2004) (“*Advantage ETC Order*”); 47 U.S.C. § 214(e)(2).

⁴ 47 C.F.R. § 54.307.

filings, including the September 24, 2004 and December 21, 2004 filings, were sent to USAC's New Jersey address via U.S. mail.⁵

Between January 2005 and June 2005, Advantage did not receive HCL support and LSS. On March 9, 2005, Advantage contacted USAC to find out why it had not received its HCL support and LSS during this period. In April 2005, USAC responded to Advantage's inquiry, stating that it could not determine why Advantage did not receive support, but speculating that Advantage did not receive HCL and LSS support because USAC did not have Advantage's HCL and LSS September 30, 2004 and December 30, 2004 line count reports on file. Over the next several months, Advantage worked with USAC to determine what, if any, information USAC was missing. Advantage informed USAC that it had in fact timely filed its September 30th and December 30th HCL and LSS line count data on September 24, 2004 and December 21, 2004, respectively. In support of this assertion, Advantage resubmitted to USAC its March, July, September and December 2004 and its March and July 2005 HCL and LSS line count reports which reflected the dates that the reports were sent, and requested that USAC promptly distribute to Advantage its unpaid universal service money. On September 14, 2005, USAC informed Advantage that USAC did not pay Advantage universal service support in the 1st quarter and 2nd quarter (January - June) 2005 because USAC was not in receipt of Advantage's HCL and LSS line count reports due on September 30, 2004 and December 30, 2004. On September 23, 2005, USAC notified Advantage that it would pay Advantage universal service support for the period in question only if Advantage: (1) provides proof that USAC *received* its HCL and LSS line

⁵ See Affidavit of Kerry Davis. Attached are the HCL and LSS line count reports for the September 30, 2004 and December 30, 2004 deadlines, dated September 24, 2004 and December 21, 2004, respectively, the dates that the reports were filed with USAC.

count data; or (2) obtains a waiver from the FCC. Accordingly, to the extent necessary, Advantage hereby submits the instant petition for waiver.

II. Discussion

Although Advantage timely filed its September 30th and December 30th HCL and LSS quarterly line count reports with USAC, Advantage requests, to the extent necessary, a temporary waiver of Section 54.307 of the Commission's USF Rules.⁶

a. Advantage Met Its ETC Obligations and Complied with the FCC's USF Rules

Section 54.307 of the FCC's Rules requires a competitive ETC, such as Advantage, to report to USAC the number of working loops it serves on a quarterly basis at the end of March, July, September, and December. Pursuant to Section 54.307, Advantage completed and timely sent to USAC its September and December 2004 HCL and LSS line count reports on September 24, 2004 and December 21, 2004, respectively. Advantage made a good faith effort to comply with the HCL and LSS filing deadlines,⁷ reasonably relying on the U.S. mail to timely deliver its HCL and LSS line count reports to USAC. Nothing in the FCC's line count rules states that an ETC submitting its line count report must confirm receipt of its filing. The rule merely states that an ETC must report its line count data to USAC, which Advantage did. Advantage has included as Attachment A its September 30th and December 30th HCL and LSS line count reports. The reports are dated September 24th and December 21st, the dates that Advantage sent its

⁶ 47 C.F.R. § 54.307.

⁷ *In the Matter of APCC Services, Inc., Data Net Systems, LLC, Davel Communications, Inc., Jaroth, Inc. d/b/a Pacific Telemanagement Services, and Intera Communications Corp., Complainants v. Network IP, LLC, and Network Enhanced Telecom, LLP, Defendants*, File No. EB-03-MD-011, Order, DA 05-2819 ¶15 (October 27, 2005).

reports to USAC. As evidence that Advantage timely submitted its September 30th and December 30th reports, Attachments B and C contain affidavits from the Advantage employees who filed the reports. Advantage met its HCL and LSS reporting requirements for receipt of universal service support. Advantage requests, therefore, the FCC to direct USAC to distribute to Advantage its unpaid USF support for the period from January to June 2005.

Although Advantage met its ETC obligations by timely submitting its September 30th and December 30th HCL and LSS line count reports, Advantage has implemented new procedures and safeguards to ensure that future filings will be received by USAC on a timely basis.⁸ Advantage has starting filing all of its line count reports with USAC both electronically and manually via overnight mail, tracking each package and verifying receipt of the package. Additionally, Advantage now requests that USAC date-stamp and return a copy of its filings, allowing Advantage to verify receipt of the actual line count reports.

b. Good Cause Exists for Grant of Advantage's Request for Waiver

Under Section 1.3 of its rules, the Commission may waive any provision of its rules if good cause is shown.⁹ The FCC's rules are presumed valid; however, the Commission may exercise its discretion to waive a rule when the underlying purpose of the rule, if enforced, would not be served, particular facts make strict compliance inequitable or inconsistent with the public interest, or the applicant has no reasonable

⁸ *In the Matter of Federal-State Joint Board on Universal Service, Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, Order, DA 05-2829 (October 27, 2005) ("*Frontier Order*").

⁹ 47 C.F.R. § 1.3.

alternative.¹⁰ In addition, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ As discussed below, to the extent a waiver is necessary, good cause exists to waive the FCC's rules regarding the deadline for filing HCL and LSS line count reports.

i. The Underlying Purpose of the FCC's Rules Will Not be Served

Denial of universal service support to Advantage for the period in question would be inconsistent with the underlying purpose of the FCC's rule. The USF was established to ensure all Americans have access to affordable, quality telecommunications service.¹² The FCC's USF rules were established to ensure the delivery of affordable telecommunications service to all regions of the nation, including low-income consumers and those living in high-cost areas.¹³ Advantage provides service to very high-cost and low-density portions of Tennessee.¹⁴

Section 54.307 of the FCC's rules, requiring ETCs to file quarterly line count data by specific dates, ensures that an ETC receives its allocated universal service money for the appropriate period of time. If the FCC strictly enforces this rule, Advantage will not receive approximately \$321,948 in universal service support it is owed. While there are other carriers providing service in rural Tennessee, Advantage is the only carrier providing ubiquitous, high-quality service to remote parts of its service area in Tennessee. Also, as stated in its ETC

¹⁰ 47 C.F.R. § 1.925.

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1990).

¹² *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 (May 8, 1997).

¹³ *Federal-State Board on Universal Service; Startec Global Communications Corporation Request for Forbearance or Exemption From the Universal Service Contribution Requirement*, 14 FCC Rcd 8030 (April 16, 1999); see also 47 U.S.C. § 254.

¹⁴ *Advantage ETC Order* ¶¶ 22 - 24.

application and supplemental filings,¹⁵ Advantage plans to construct additional towers to provide third-generation digital services, but will be unable to construct additional towers if it does not receive this much-needed universal service support. Without this money, Advantage's plans to build-out its network in its ETC designated service area will be delayed until it receives more universal service support.

The FCC has waived its line count rules where strict application of the filing deadline may jeopardize the provision of service and delay system construction and upgrades.¹⁶ In doing so, the FCC further noted that such a waiver is consistent with the FCC's mandate to ensure that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, have access to telecommunications and information services.¹⁷ A waiver in the instant case would allow Advantage to continue to provide service to high-cost portions of Tennessee and to continue to build out its network in underserved portions of rural Tennessee.¹⁸ Delaying telecommunications service to underserved, rural portions of Tennessee does not serve the purpose of providing affordable telecommunications service to all Americans. Because the underlying purpose of the rule would not be served if the FCC enforced it in Advantage's case, good cause exists to grant Advantage's waiver request.

¹⁵ See Advantage Cellular Systems, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee, filed May 9, 2003 (Petition for Designation as an ETC); Advantage Cellular Systems, Inc., Supplement to Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee, filed June 17, 2003); Advantage Cellular Systems, Inc., Second Supplement to Petition for Designation as an Eligible Telecommunications Carrier in the state of Tennessee, filed May 18, 2004); Letter from Rebecca Murphy, Counsel to Advantage Cellular, to Belinda Nixon, FCC, dated June 18, 2004.

¹⁶ *Smith Bagley, Inc.*, 16 FCC Rcd 15275 ¶ 7 (2001) ("*Smith Bagley, Inc.*").

¹⁷ *Id.*

¹⁸ *Frontier Order* ¶ 11.

**ii. Strict Application of the Rule Would be Inequitable and
Contrary to the Public Interest**

It would be inequitable for the FCC to strictly apply the HCL and LSS line count rule where Advantage timely submitted its HCL and LSS filings. Even the temporary loss of USF support has caused competitive harm to Advantage. The loss of support has prevented Advantage from completing planned expansions of its network. Advantage had budgeted to build a new tower by the end of the year. Because Advantage did not receive its budgeted universal service support, construction of this tower has been delayed until 2006. Since January of this year, Advantage has lost ten percent of its customers. The loss of a significant number of customers coupled with not receiving its budgeted universal service support has caused Advantage to struggle to remain competitive in the Tennessee market. In order to stay competitive in the market, Advantage cannot raise its rates. If the FCC strictly enforces its HCL and LSS line count rule to preclude support for the period in question, the FCC will put Advantage at a competitive disadvantage because Advantage cannot raise its rates to make up for the loss of its customers and its unpaid universal service support and cannot afford to upgrade its network in order to regain and/or retain its customers.

The FCC has concluded that it would be onerous to deny an ETC receipt of USF support for almost two quarters.¹⁹ The FCC has also concluded that the loss of universal

¹⁹ *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, DA 03-236 (July 18, 2003) (granting waiver of the FCC's USF certification deadline); *see also In the Matter of Federal-State Joint Board on Universal Service, Smithville Telephone Company, Inc. Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, CC Docket No.

service support “could cause significant hardship” in rural, insular and high-cost areas, and that a waiver of its IAS filing deadline is therefore warranted, where the lost support amounts to \$6.86 per line.²⁰ Advantage, if denied the support due to it for the first half of 2005, will lose \$321,948 in HCL and LSS funding that is used to provide service to approximately 9,000 customers in rural, insular, and high-cost areas. Advantage will therefore lose approximately \$35.77 per line, over five times the amount of per line support the loss of which the FCC has recognized is likely to cause significant hardship in rural, insular and high-cost areas. The inequity of denying such substantial support to Advantage demonstrates that good cause exists to grant Advantage’s waiver request.

Quality service at just, reasonable, and affordable rates is a fundamental principal of the FCC’s universal service policies. Advantage needs the universal service support to continue to provide quality service to rural Tennessee at affordable rates. As stated above, without its unpaid USF support, Advantage will have to delay its build-out plans. Accordingly, and for the reasons discussed in Section II.b.i. above, denial of USF support to Advantage would be contrary to the public interest.

iii. Advantage has No Reasonable Alternative

In order for Advantage to receive its universal service money that USAC has not paid, but Advantage is owed, Advantage has no reasonable alternative but to seek a waiver of the FCC’s rules. As stated above, when Advantage inquired with USAC about how it could get paid its unpaid universal service money, USAC notified Advantage that

96-45, Order, DA 04-1393 (May 18, 2004) (“*Smithville Order*”) (waiving the LSS quarterly line count deadline where denial of USF support for a year would be onerous).

²⁰ *Frontier Order* ¶¶ 5, 7-8 (waiving its IAS deadline where enforcement of the deadline would result in the loss of \$9.6 million in universal service support to a carrier serving 1.4 million customers).

it must seek a waiver of the FCC's rules. Advantage offered to work with USAC to provide it with any information USAC requested, and offered to provide affidavits from its General Manager and the individual in charge of its quarterly filings, swearing that the line count reports were timely filed. USAC rejected these offers. Therefore, to receive its unpaid universal service support, Advantage has no reasonable alternative but to seek a waiver of the FCC's HCL and LSS line count rules. Accordingly, Advantage hereby submits this petition for waiver.

**c. Neither USAC Nor Other USF Recipients Will Be Burdened By a
Grant of Advantage's Waiver Request**

Granting Advantage's request will not burden USAC or any other HCL or LSS recipient. Since USAC notified Advantage that it did not receive Advantage's September 30th and December 30th HCL and LSS line count reports, Advantage resubmitted all of its HCL and LSS line count reports for 2004. USAC can easily calculate the amount owed to Advantage. Holding back crucial high-cost support that will benefit rural customers will frustrate the purpose of providing such support in the first place. Upon grant of this waiver, USAC can simply adjust Advantage's USF disbursements to correct the past amounts using its ongoing true-up process. The public interest benefits of Advantage receiving its universal service support outweighs any bureaucratic processing difficulties that USAC may face.²¹

Additionally, other HCL or LSS recipients will not be harmed by a grant of Advantage's request. Other HCL and LSS recipients will receive essentially the same amount of HCL and LSS regardless of whether the FCC grants Advantage's request.

²¹ *Smithville Order* ¶ 5.

III. Conclusion

Without a grant of this waiver request or other FCC action consistent with this request, Advantage will be forced to delay its planned network upgrades and other capital projects as promised in its ETC applications to the detriment of wireless customers in its service area. Grant of the requested waiver is consistent with both the public interest and the underlying purpose of the Commission's USF rules. Based on the foregoing, Advantage respectfully requests that the Commission direct USAC to accept Advantage's HCL and LSS line count reports and pay Advantage the universal service money it is owed. In the alternative, Advantage requests that the FCC grant a waiver of Section 54.307 of the Commission's Rules as requested herein.

Respectfully submitted,

**ADVANTAGE CELLULAR SYSTEMS,
INC.**

By: 

Michael R. Bennet
Rebecca L. Murphy
Bennet & Bennet, PLLC
10 G Street, NE
7th Floor
Washington, DC 20002
202-371-1500


Its Attorneys

Dated: November 2, 2005

DECLARATION OF LESLIE GREER

I, Leslie Greer, do hereby declare under penalty of perjury the following:

1. I am the General Manager of Advantage Cellular Systems, Inc.
2. I have read the foregoing "Advantage Cellular Systems, Inc. Petition for Waiver of the FCC's Universal Service Rules." I have personal knowledge of the facts set forth therein, and believe them to be true and correct.



Leslie Greer

10-31-05
Date

Attachment A

High Cost Loop, Local Switching Support and Long Term Support Line Count

Date: 9/24/04

CETC Name: Advantage Cellular Systems, Inc.

CETC Study Area Code (SAC): 299905

Contact Name: Kerry Davis

Contact Telephone Number: (615) 464-2355

Lines Reported As Of: 3/31/04

Areas are Eligible for Support

[illegible]

High Cost Loop, Local Switching Support and Long Term Support Line Count

Date: 12/21/04

CETC Name: Advantage Cellular Systems, Inc.

CETC Study Area Code (SAC): 299905

Contact Name: Kerry Davis

Contact Telephone Number: (615) 464-2355

Lines Reported As Of: 6/30/04

Areas are Eligible for Support

[illegible]

Attachment B

AFFIDAVIT OF KERRY DAVIS

I, **Kerry Davis**, do hereby declare under penalty of perjury the following:

1. I am the Accounting Supervisor of Advantage Cellular Systems, Inc. ("Advantage").
2. I am responsible for completing Advantage's universal service filings with the Universal Service Administrative Company ("USAC"). I personally prepared Advantage's September 30th and December 30th HCL and LSS line count reports submitted to USAC on September 24, 2004 and December 21, 2004, respectively. On September 24th, I placed Advantage's HCL and LSS report, due September 30th, in an internal mail receptacle for Advantage's mail clerk to stamp and send to the post office. On December 21st, I placed Advantage's HCL and LSS report, due December 30th, in an internal mail receptacle for Advantage's mail clerk to stamp and send to the post office.

Kerry Davis
Signature

KERRY DAVIS
Typed or Printed Name

Attachment C

AFFIDAVIT OF GINGER MCAFEE

I, **Ginger McAfee**, do hereby declare under penalty of perjury the following:

1. I am the Commercial Clerk in charge of mail delivery for Advantage Cellular Systems, Inc. ("Advantage").
2. I am responsible for handling all of Advantage's incoming and outgoing mail. On September 24, 2004 and December 21, 2004, I personally picked up all mail placed in the outgoing mail basket and handed it to a commercial courier who is responsible for daily delivery of Advantage's mail to the Alexandria, TN post office.


Signature


Typed or Printed Name